(a) the deceased was an illiterate person, who could neither read nor write Tamil or English and as such the contents were not explained to her by a competent person, and if the will had been explained to her, she would not have executed it;

(b) the deceased was not in her proper senses when she executed the will, as her health from 1950 onwards had deteriorated and she was over seventy years of age.

During the hearing, at the close of the case for the plaintiff counsel for the defendant applied for and counsel for the plaintiff did not object to, an amendment to the statement of defence by the addition of the following paragraph :—

"That the deceased was under the influence of the plaintiff when she executed the will and that the said will is not the expression of the said will of the deceased."

With regard to the defendant's contention that the deceased was not in her proper senses when she executed the will, this was not supported by the evidence. On the contrary all the evidence tends to show that although the deceased was not enjoying good health for some time before her death she was not suffering from any mental disability. She spoke intelligently; she was suffering from some of such physical disabilities as are due to an advanced age.

There is evidence to support the contention that the deceased was an illiterate person who could neither read nor write Tamil or English; but I was satisfied from the evidence that the will was duly and properly explained to her, that she understood the contents of the will and that she executed it knowing well the purport of the document. S. Subramaniam (P.W. 3) speaks English well and is fully capable of explaining the simple and plain contents of the will in question. He is a reliable witness and I am satisfied from his evidence that the deceased understood what she was about to execute. This witness stated that when the deceased had executed the will she said: "He (referring to the plaintiff) has earned it and he knows how to use it."

With regard to the contention that the deceased was under the influence of the plaintiff when she executed the will, I did not consider, having gone through the evidence, that the defendant has discharged the burden on him of proving undue influence (see *William Low v. James Guthrie*[1] and *Craig v. Lamoureux*[2]). In the latter case Viscount Haldane at p. 357 said: "Undue influence, in order to render a will void, must be an influence which can justly be described by a person looking at the matter judicially to have caused the execution of a paper pretending to express a testator's mind, but which really does not express his mind, but something else which he did not really mean." I do not consider that the fact that instructions to the solicitor for the drafting of the will were given in detail by the plaintiff forms in the circumstances of this case a just ground for suspicion. But in any case I am fully satisfied that no undue influence was exercised on the deceased and that the deceased understood the document she executed and that the will expressed her mind.

I therefore gave judgment for the plaintiff with costs holding that the plaintiff is the executor of the last will of the deceased and that will is established.

Claim allowed.

Solicitors: *Shearn, Delamore & Co.; Bannon & Bailey.*

A. DICKINSON v. PUBLIC PROSECUTOR

[A. Cr. J. (Bellamy J.) December 14, 1954]

[K. L.—Criminal Appeal No. 87 of 1954]

Criminal Procedure Code (Cap. 6), ss. 305 and 310 — Application to amend Petition of Appeal out of time — Principles to be applied in dealing with such applications.

This was an application by motion under s. 310 of the F.M.S. Criminal Procedure Code for an order that a petition of appeal filed in the appeal be amended by adding new grounds of appeal. The appellant had pleaded guilty to a charge of driving a motor car whilst under the influence of drink to such an extent as to be incapable of having proper control of the said vehicle, an offence under s. 6(1) of the Motor Vehicles (Driving Offences) Proclamation. He was sentenced to one month's imprisonment and disqualified from holding a driving licence for one year. Notice of appeal was lodged by the appellant and in due course the appellant lodged his petition of appeal after he was served with the grounds of decision of the learned President. This petition of appeal was settled by an experienced member of the Federation Bar and was based on two grounds relating to the sentence imposed. Subsequently the appellant's solicitor filed the motion to amend the petition of appeal. The proposed amendments read: "3. That the learned President erred in law in convicting the accused in the complete absence of an essential ingredient to the offence namely any evidence that the extent of the intoxication was such as to render the appellant incapable of having proper control of his motor car. 4. That the learned President was wrong in law in not amending the plea of guilty . . . when the appellant made a statement in mitigation which was inconsistent with his plea of guilty. 5. That the learned President erred in law in not calling for evidence or information regarding the background antecedents and character of the appellant before passing sentence upon him."

Held: (1) in applying for leave to amend a notice of appeal and/or petition of appeal out of time the appellant must satisfy the Court firstly that circumstances exist which justify an extension of time and secondly that he has a reasonable prospect of success on the appeal on the new matters which he is desirous of raising at the hearing of the appeal by the proposed amendment; (2) in this case there were on the facts no circumstances which would justify an extension of the time; (3) on the facts of the case there were no merits in the application as s. 305 of the Criminal Procedure Code precluded an accused person who has pleaded guilty and been convicted by the Court from appealing against conviction.

Cases referred to:—

(1) *Rigby* (1923), 17 Cr. App. R. 111.
(2) *Lesser* (1939), 27 Cr. App. R. 69.
(3) *Charles Cullum* (1942), 28 Cr. App. R. 150.
(4) *E. Rhodes* (1910), 5 Cr. App. R. 35.
(5) *R. v. Ng Guan Thong* (1935) M.L.J. 25.
(6) *William Arthur Willmott & William McLaren* (1923), 24 Cr. App. R. 54.
(7) *Yorkshire Tyre & Axle Co. v. Rotherham Board of Health* (1858), 4 C.B. (N.S.) 362.
(8) *R. v. Sussex JJ.* 1 M. & S. 734.
(9) *Abu Bakar bin Alif v. R.* (1953) M.L.J. 19.

MAGISTRATE'S CRIMINAL APPEAL.

H. L. Wrigglesworth for the appellant.

Bernard Sheldon (Federal Counsel) for the respondent.

Bellamy J. : — At the conclusion of the arguments I dismissed this application intimating that I would give my reasons in writing at a later date. I now proceed to do so.

This was an application by motion under section 310 of the Criminal Procedure Code of the Federated Malay States (hereinafter referred to as "the Code") for an order that the petition of appeal filed herein on the 6th October, 1954 be amended by adding the new grounds of appeal as contained in the notice of motion.

The appellant was charged on the 23rd August, 1954 in the Sessions Court at Kuala Lumpur on a charge of driving a motor car whilst under the influence of drink to such an extent as to be incapable of having proper control of the said vehicle, contrary to section 6(1) of the Motor Vehicles (Driving Offences) Proclamation. To this charge the appellant, who was unrepresented, pleaded guilty. He was convicted and sentence was postponed to the 26th August, 1954. On the 26th August, 1954 the appellant was sentenced to one month's imprisonment and disqualified from holding a driving licence for one year.

The appellant lodged a notice of appeal against sentence on the same day and upon his application to be released on bail pending the hearing of the appeal he was admitted to bail on the same day. On the 29th September, 1954 a copy of the learned President's grounds of decision was served upon the appellant, and on the 6th October, 1954 he lodged his petition of appeal. This petition of appeal was settled by an experienced member of the Federation Bar, and it was based on two grounds which were fully set out. These grounds were, firstly, misdirection by the learned President on a point of law relating to sentence; and secondly, severity of sentence. On the latter ground no fewer than seven factors in mitigation of sentence, none of which was raised by the appellant in the Sessions Court, were pleaded as a ground or grounds for altering the sentence of imprisonment imposed by the learned President.

On the 20th October, 1954, that is, within two days of the hearing of the appeal, as the learned Deputy had previous to that date intimated that he would object to the proposed amendments of the petition of appeal being argued at the hearing of the appeal, the appellant's present solicitor filed this motion.

The proposed amendments of the petition of appeal read:—

"3. That the learned President erred in law in convicting the accused in the complete absence of an essential ingredient to the offence namely any evidence that the extent of the intoxication was such as to render the appellant incapable of having proper control of his motor car.

"4. That the learned President was wrong in law in not amending the plea of guilty to one of not guilty when the appellant made a statement in mitigation which was inconsistent with his plea of guilty.

"5. That the learned President erred in law in not calling for evidence or information regarding the background antecedents and character of the appellant before passing sentence upon him."

The grounds of the motion, as shown in the affidavit in support thereof sworn to by the appellant's present solicitor, were that the appellant's present solicitor was retained to represent the appellant at the hearing of his appeal on the 19th October, 1954 (that is, after the time fixed for lodging the petition of appeal had expired) and that, having perused the record of the proceedings, he, the appellant's present solicitor, was of opinion that such further grounds of appeal should be filed.

In opposing the motion the learned Deputy submitted that to succeed the appellant had first to satisfy the Court that there were substantial reasons why the proposed amendments were omitted from the petition of appeal which was lodged on the 6th October, 1954, and that the reason adduced, namely, that in the appellant's Counsel's opinion such amendments should be filed, was not sufficient. In support of his submission he cited the decisions in the Court of Criminal Appeal in England in the cases of *Rigby*[1], *Lesser*[2] and *Charles Cullum*[3].

On the merits, the learned Deputy submitted that in any event the application should not be allowed insofar as the first two proposed amendments were concerned because (a) there was nothing in the record of the proceedings to show that when the appellant pleaded Guilty to the charge he did not intend so to plead; (b) that the appellant's statement to the learned

President of the Sessions Court in mitigation of the offence did not amount to a plea of Not Guilty; (c) that the appellant had nowhere expressed a wish to change that plea and, indeed, by his petition of appeal he still maintained it; and (d) having pleaded guilty, the appellant was now precluded from appealing against his conviction by reason of section 305 of the Criminal Procedure Code.

The circumstances in which the Court of Criminal Appeal in England will grant an extension of time in which to appeal has been well settled since 1910. Although there were earlier cases in which this question was considered by that Court, the rule was first laid down by Lord Alverstone in the case of *E. Rhodes*[4], where the Lord Chief Justice said:—

"Ten days is fixed by the Act (Criminal Appeal Act, 1907) with power, except in cases involving death, to extend the time. Applications out of time are becoming more numerous. A short delay may be disregarded by the Court if it thinks fit, but where a substantial interval of time—a month or more—elapses, it must not be taken for granted that an extension of time will be allowed as a matter of course without satisfactory reasons."

Since that time that case has been followed, and its principle applied, in at least three cases. In *Rigby*[1], Lord Hewart C.J. expressed the rule in these words, at page 112:—

"It must not be understood that an extension of time will be granted as a matter of course; that Court will require substantial reasons to be adduced before they will grant such an extension."

Then in *Lesser*[2], Humphreys J., in the course of his judgment, uses these words, at page 71:—

"There appears to be a danger of the rules which govern the proceedings of this Court being regarded as of no importance. The Court has listened to repeated applications for extensions of time for leave to appeal, which have been put forward as if the granting of such an application were a mere matter of form. While the Court is always willing to listen to such an application on the ground that the applicant did not understand what the points in issue were, or that he could not read or write, or on some ground of that kind relating to a particular case, it should be clearly understood that a person who has failed to appeal within the ten days allowed by statute has lost his right of appeal."

And in *Charles Cullum*[3], the Lord Chief Justice, after observing that the rules were of importance, added, at page 150:—

"We have constantly refused applications for an extension of time within which to make an appeal when there have been no substantial merits brought to our notice which seem to justify the Court in extending the time . . . . . ".

Counsel for the applicant has urged that these English authorities are not binding upon this Court whose power to permit, or refuse, an appeal on the additional grounds set out in the notice of motion is regulated by section 310 of the Code.

I think there can be no doubt that, with the exception of decisions of the Judicial Committee of the Privy Council and, in some case, of the House of Lords, decisions of the English Courts are not binding on this Court. However, this Court is always prepared to treat such authorities with deference and, where they can be held to apply, will follow them. Before accepting them, of course, the Court must be satisfied that they deal with the same problem as that which it is called upon to solve in the case in which these authorities are cited to it.

Now, the problem which I am called upon to solve in the present application is, as I see it, very different from the problem dealt with in the English cases to which I have referred. In each of those cases the applicant was out of time in giving either notice of appeal or notice of his application for leave to appeal and had thereby lost his right to appeal under section 7 of the Criminal Appeal Act, 1907. In this case I have to consider the applicant, having complied with the provisions as to appeals laid down in section 307 (ii) and (iv) of the Criminal Procedure Code, has not lost his *right* of appeal. What he is seeking is not leave to appeal out of time, but leave to amend out of time his petition of appeal by adding further grounds of appeal which, without such leave, he would be precluded from arguing at the hearing of his appeal—quite a different matter.

The procedure regulating appeals from Magistrate's Courts and Sessions Courts to the Court of a Judge is to be found in Chapter XXX of the Code.

By section 307 of the Code an appellant is required to lodge a notice of appeal and a petition of appeal. The notice of appeal must be lodged within ten days from the time of the judgment, sentence or order which is questioned (subs. (i)), and the petition of appeal must be lodged either within ten days after the copy of the grounds of decision has been served on the appellant (subs. (iv)) or (where the appellant, having filed his notice of appeal, has applied for a copy of the notes of evidence recorded by the trial Court within ten days from the date of the judgment, sentence or order) within ten days from the date when a notice is left at his address for service that a copy of the notes of evidence can be had against payment of the fee payable therefor (subs. (v)). Every petition of appeal must state shortly the substance of the judgment appealed against and it must contain definite particulars of the points of law or of fact in regard to which the Court appealed from is alleged to have erred (subs. (vi)). If the petition of appeal is not filed within the time prescribed, the appeal shall be deemed to be withdrawn and the trial Court, subject to the powers of a Judge under section 310 of the Code, shall enforce its sentence or order if any stay of execution has been granted (subs. (ix))

Section 310 of the Code enacts :—

"A Judge may, on the application of any person desirous of appealing who may be debarred from so doing upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the magistrate and to the parties as such Judge shall consider desirable, in order that substantial justice may be done in the matter."

This section clearly gives a Judge a discretionary power to allow an appeal whether either the notice of appeal or the petition of appeal is out of time. Therefore, where any person is desirous of appealing against any judgment, sentence or order of a magistrate's court or a sessions court and he has failed to comply with the requirements of section 307 of the Code as to the time within which he must lodge his notice of appeal or his petition of appeal, he has lost his right of appeal. His next step is to apply to the Court of a Judge for an extension of time within which to lodge his notice of appeal or his petition of appeal, and such an application should be made by motion under this section.

As to the principles to be applied in considering such an application, as the power given by section 310 to a Judge to grant or refuse the application is similar to the power given by section 7 of the Criminal Appeal Act, 1907 to the Court of Criminal Appeal in England to extend or to refuse to extend the time within which notice of appeal or notice of an application for leave to appeal must be given, I am of opinion that the principle laid down in *E. Rhodes*[4] applies, and should be followed, here. In my view, the rules of procedure for appeals are important, and they are clearly intended by the legislature to be obeyed. Whether the time is extended or not must depend on the special circumstances of the particular case, as opposed to an amendment out of time of a notice or petition of appeal, the Court should only show indulgence to such a party when no negligence nor inaction nor want of *bona fides* is imputable to such a party.

But what is the procedure where, as in the application I am considering, the time limited for lodging the petition of appeal having expired, an appellant desires to raise at the hearing of the appeal a new matter not covered either by his notice of appeal or by his petition of appeal?

Counsel for the applicant, as I followed his argument submitted that in such a case, although the appellant here had proceeded by way of motion under section 310 of the Code he had done so *ex abuntantia cautela* and on the authority of *Rex v. Ng Guan Thong*[5], there was no provision in the Code which required the appellant so to do. He submitted that *Ng Guan Thong's*[5] *case* had been wrongly decided and should not be followed; alternatively, if it were held that that case had been rightly decided, it was a Singapore decision and should not be followed here, particularly in view of the amendment of the chapter dealing with appeals in the Criminal Procedure Code of the Straits Settlements since the date of that decision. He urged that in such a case an appellant was not required to obtain the leave of a Judge by motion under section 310 of the Code or at all and that it was sufficient if the appellant lodged in this Court, at any time before the hearing of the appeal, the additional grounds of appeal to be relied on as was done in the English cases of *William Arthur Willmott and William McLaren*[6].

On the other hand, the learned Deputy submitted that on the authority of *Ng Guan Thong's*[5] *case* the appellant, in adopting the procedure laid down in *Ng Guan Thong's*[5] *case*, had followed the proper procedure. He submitted furthermore, that *Ng Guan Thong's*[5] *case* had been rightly decided and that it could, and should, be followed in the Federation.

What I have to say on these points will necessarily be *obiter dicta* so far as concerns this application, but I propose to deal with them because I am told that there is some uncertainty among practitioners as to the correct procedure to be adopted in such cases and that an expression of opinion from this Court may assist to clear this away. The matter was very fully argued, and perhaps it would not be out of place here to express my indebtedness to Counsel for the applicant and to the learned Deputy for the skill and thoroughness with which the arguments were presented.

There is no special provision in the Code which lays down the procedure to be followed by an appellant in such a case. It is, I think, conceded by both sides that section 310 of the Code does not apply, and I am inclined to agree that the words of that section were probably not intended to include such a case. How then is this gap in the Code to be filled?

Section 5 of the Code provides :—

"As regards matters of Criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force the law relating to criminal procedure for the time being in force in the Colony shall be applied so far as the same shall not conflict or be inconsistent with this Code and can be made auxiliary thereto."

Let me now turn to the Criminal Procedure Code of the Straits Settlements (Chapter 21). That Code is also silent as to the procedure to be applied in such a case. But under section 5 of that Code where no special provision relating to criminal procedure has been made in that Code or in any other law for the time being in force the criminal procedure in force in England shall be applied. I therefore turn to English

criminal procedure to see if I can find some provision there which "shall not conflict or be inconsistent with this Code and can be made auxiliary thereto."

By section 33 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c.49) there is an appeal from petty sessions directly to the High Court by case stated when any conviction, order, determination or other proceedings of the justices is questioned on the ground that it is erroneous in point of law (including, of course, the submission that the finding in fact has no evidence to support it) or in excess of jurisdiction. A case cannot be stated under this section where a question of fact only is involved, and if an appellant chooses to go by way of case stated to the High Court he loses his right of appeal to a court of quarter sessions. An application to state a special case must be made within seven days from the date of the proceedings, and the case must be stated within three months after the date of the application (Summary Jurisdiction Rules, 1915, r. 52). Where an amendment of the case is necessary, the practice is to send the case back to the justices for amendment before argument (See *Yorkshire Tyre and Axle Co. v. Rotherham Board of Health*[7]).

An appeal from quarter sessions to the High Court is in a different position from an appeal taken directly from the justices to the High Court. In that case, as I have already stated, points of law alone are open. In this case appeal is by way of case stated which, except where a question of law is reserved for determination under the Crown Cases Act, 1849 (which established the Court known as the Court of Crown Cases Reserved, the jurisdiction of which is now vested in the Court of Criminal Appeal (section 20, Criminal Appeal Act, 1907) where such questions of law can now be raised in the appeal thereby rendering the machinery provided by this Act obsolete) or under the Quarter Sessions Act, 1849, is deemed to be an appeal, and the Divisional Court (and every Appellate Court in turn thereafter) has the right and duty to draw inferences of fact from the facts stated (The Supreme Court of Judicature (Consolidation) Act, 1925, section 25(1) & (2)). Application to the court of quarter sessions to have a case stated must be made within seven days after the determination of the proceedings (Criminal Justice Act, 1925, section 20(1)). The case is usually drawn by counsel disputing the order and then sent to the counsel for the other side for him to agree. If they both agree then both sign it, and it is then submitted to the clerk of the peace for the signature of the chairman (*R. v. Sussex JJ.*[8]). If the chairman disapproves he may draw his own case, and if counsel disagree the case must be settled by the chairman. The time for entering for hearing the case stated is within six months from the date of the judgment. The Divisional Court cannot amend the case themselves but may send the case back to the quarter sessions for re-statement.

Appeals to the Court of Criminal Appeal from any judgment of the High Court in any criminal case or matter are regulated by the Criminal Appeal Act, 1907 (7 Edw. 7, c.23). A person convicted on indictment may appeal against his conviction or any ground of appeal which involves a question of law, and with the leave of the Court of Criminal Appeal he may appeal (a) on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal, and (b) against the sentence, unless the sentence is one fixed by law (section 3). Where a person convicted desires to appeal to the Court of Criminal Appeal or to obtain the leave of that Court of Appeal, he must give notice of appeal or notice of his application for leave to appeal within ten days of the date of conviction (section 7). The Court of Criminal Appeal may extend the time for fixing notice of appeal or notice of an application for leave to appeal, except in the case of a conviction involving sentence of death (section 7). With regard to the proceedings of the Court of Criminal Appeal, that Court is given the same powers as those possessed by the Court of appeal in civil matters (section 9). By the Rules of the Supreme Court, 1883, Order 58, r. 4, the Court of Appeal has, in civil matters, the power to amend and the power to admit fresh evidence in the Court's absolute discretion, and by Order 58, r. 2 the Court of Appeal has power to amend a notice of appeal at any time as it may think fit. These powers can, therefore, be exercised in the same way by the Court of Criminal Appeal.

It is quite clear, I think, that the procedure in England as to appeals both from petty sessions and from courts of quarter sessions to the High Court, being totally inconsistent with the procedure in the Code relating to appeals from magistrate's courts or sessions courts to the Court of a Judge, cannot be applied here to fill the gaps in our criminal procedure which I am considering. But the procedure in England as to appeals to the Court of Criminal Appeal is comparable with our procedure of appeal to the court of a Judge and "can be made auxiliary thereto" and, in my view, it should be applied to fill these deficiencies in the Code. I am fortified in my opinion by the decision in *Ng Guan Thong's*[5] *case* where I think the learned Judge, although he did not expressly so state in his judgment, took the same view. I am of

opinion that where an appellant is desirous of arguing at the hearing of the appeal grounds of appeal not disclosed either in his notice of appeal or in his petition of appeal, he must apply by motion to the Court which is to hear the appeal to amend his notice of appeal and/or his petition of appeal by adding the new grounds to those stated therein. To this extent I consider that *Ng Guan Thong's*[5] *case* was correctly decided. The cases of *Willmott and McLaren*[6] where the Court allowed further grounds of appeal to be filed without the necessity of a formal application, show clearly that the Court viewed such a practice as extremely inconvenient and intended to discourage it.

As to the principles to be applied in considering whether the appellant should be allowed to amend his notice of appeal and/or petition of appeal out of time, I consider that the appellant must satisfy the Court, firstly, that circumstances exist which justify an extension of the time; and, secondly, that he has a reasonable prospect of success on the appeal on the new matters which he is desirous of raising at the hearing of the appeal by the proposed amendment. Each application, must, needless to say, be considered in the light of its own particular circumstances.

Applying these principles to the present case, there are here, in my opinion, no circumstances which justify an extension of the time. There was a change of solicitors before the hearing of the appeal, and the appellant's present solicitor was of opinion that the petition of appeal should be amended to include the amendments set forth in the notice of motion. Bearing in mind that the original petition of appeal had been settled by counsel, this was, in my opinion, no ground for allowing the application.

This would have been enough to dismiss the application but in my view the application failed also on its merits.

The appellant pleaded guilty unequivocally in the Court below. Section 305 of the Code precludes an accused person who has pleaded guilty and been convicted by the Court from appealing against conviction. His right of appeal is limited to the extent and legality of the sentence.

There is no question that the charge disclosed an offence. The learned President's minutes show that the charge was read and explained to the accused and that he understood it. It is not suggested here that the appellant did not understand English or that he failed to appreciate the consequences of his plea. Having pleaded guilty unequivocally, as I have said, the learned President recorded that plea and then took a summary of the facts. He was not obliged to record evidence on a plea of guilty save where the accused disputed the facts or where the facts disclosed no offence or an offence not charged or if the accused made a statement which clearly showed that he had not committed the offence charged. I can find none of these requisites here. The learned President, I have not the smallest doubt, was justified in convicting. The first two proposed amendments, therefore, could not be allowed.

As to the third proposed amendment, this is based on the decision in *Abu Bakar bin Alif v. R.*[9] where the learned Judge emphasised the importance of Magistrates calling for evidence or information regarding the background, antecedents or character before passing sentence on a convicted person. I wholeheartedly agree with these observations where the convicted person has been convicted of an offence involving an act of dishonesty or of violence, but in my view it can have no application to a charge under the Motor Vehicles (Driving Offences) Proclamation.

For these reasons, I dismissed the application.

Application dismissed.

Solicitors for the appellant: *S. M. Yong & Co.*

KOH HOR KHOON v. REGINA

[A. Cr. J. (Whitton J.) September 9, 1955]

[Singapore — Magistrate's Appeal No. 28 of 1955]

Bankruptcy Ordinance (Cap. 45), ss. 17, 107(1)(p) and 124 — Pledging otherwise than in the ordinary way of his trade goods obtained on credit and not paid for — Admission of certified copy of notes of public examination — Evidence Ordinance (Cap. 13), ss. 3 and 133.

This was an appeal against the conviction of the appellant on two charges under s. 107(1)(p) of the Bankruptcy Ordinance of pledging otherwise than in the ordinary way of his trade quantities of Japanese galvanised iron sheets which he had obtained on credit and had not paid for. At the trial a certified copy of the notes of evidence taken at the public examination of the appellant in bankruptcy proceedings was admitted in evidence. The appellant had said in the course of the public examination that he had pledged the galvanised iron sheets which he had obtained on credit and not paid for and got a loan of about $70,000 for it. One of the principal points argued on appeal was that the certified copy of the notes of evidence was wrongly admitted in evidence.

Held: (1) the notes of the public examination constituted a document within the meaning of s. 3 of the Evidence Ordinance and were therefore properly proved under s. 124 of the Bankruptcy Ordinance by production of a certified copy; (2) s. 17 of the Bankruptcy Ordinance overrides s. 133 of the Evidence Ordinance so far as the public examination of a bankrupt is concerned; (3) the notes of the public examination in this case were rightly admitted in evidence.